

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§305.49, 305.50, 305.64, 305.69, and 305.154, concerning Consolidated Permits. Section 305.69 is adopted with changes to the proposed text as published in the October 22, 1999 issue of the *Texas Register* (24 TexReg 9201). The remaining sections are adopted without changes and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Changes have been adopted in Chapter 305 as the result of ongoing efforts by the commission for regulatory reform. This rulemaking focuses on financial assurance and is based upon a two-step process. The first step involved identification of all commission programs which contain a financial assurance component and transfer of those requirements into 30 TAC Chapter 37. The second step involved processing of the rules to eliminate redundant requirements, to remove duplicative mechanisms, and to consolidate provisions whenever possible. Modifications are simultaneously adopted in coordination with 30 TAC Chapters 37, 324, 330, 331, 334, 335, and 336. Entities who are required to provide financial assurance are specifically instructed to do so in each relevant, technical chapter. Those requirements that are overseen by the commission's technical program staff, such as the calculation of closure, post closure, and corrective action costs, will remain in the technical rule chapters. Each technical chapter refers the reader to Chapter 37 for the rules pertaining to financial assurance and to the financial assurance mechanisms.

The financial assurance rules being adopted are consolidated in accordance with the commission's ongoing regulatory reform initiative. For example, previously, several programs had rules with a separate subchapter concerning financial assurance and the allowed mechanisms. Frequently, the

requirements were repetitive and identical. These rules consolidate financial requirements to reduce duplicative language while retaining the integrity of the previous requirements. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered. The mere consolidation, or inclusion, of all three types of activities in a single rule section does not alter the scope of the applicability of the rule, nor does it impose a more or less stringent regulation.

The adopted amendments to the financial assurance rules are also for the purpose of clarification, in accordance with the commission's ongoing regulatory reform initiative. For example, the adopted modifications clarify and use cross-references to indicate that the owner or operator is subject to the provisions of the relative technical chapters, the general subchapters of Chapter 37, the mechanism requirements, the mechanism wordings, and the specific program subchapters of Chapter 37.

The rule adoption is for simplification and clarification and involves few substantive changes in the procedures and criteria to be used by the commission and the regulated community for providing financial assurance and other associated activities that are regulated under this chapter. Substantive changes are minimal and occur, when necessary, for the purposes of consolidation, clarification, compatibility and consistency with commission rules and federal requirements, and protection of human health and the environment. Substantive changes in the regulations were specifically articulated in the proposal preamble published in the October 22, 1999 *issue of the Texas Register* to make those instances easily identifiable. In general, these rule amendments involve organization, editorial

modifications, reordering requirements into a more logical sequence, and correcting cross-reference citations.

Texas law requires the commission to adopt rules requiring financial assurance for various program areas including Texas Water Code (TWC), §26.352 for underground storage tanks; TWC, §27.073 for underground injection well facilities; Texas Health and Safety Code (HSC), §341.035 and §341.0355 for public drinking water supply systems; HSC, §361.085 for solid waste, hazardous waste, and permitted facilities; HSC, §371.026, for used oil handlers; HSC, §401.108 for licensed facilities; and HSC, §401.051 and §401.412 for radioactive substances.

The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Financial assurance is important for two primary reasons. First, to prevent delays in addressing environmental needs at facilities, owners and operators need to have funds that are readily available. Moreover, if the owner or operator lacks sufficient funds, environmental needs may have to be addressed through state or federal cleanup funds rather than by the entity responsible for the facility. Additionally, some programs require liability coverage to protect third parties from bodily injury and property damage that may result from a permittee's waste management activities.

The adopted amendments are necessary to maintain consistency of commission rules and to fulfill the statutory mandates requiring financial assurance.

#### SECTION BY SECTION DISCUSSION

Corrections to the proposed rules for Chapter 305 were published in the *Texas Register* on November 26, 1999 (24 TexReg 10606). The changes were primarily to include a statutory authority reference. The corrections are included in the adopted rule text. Additionally, the commission adopts §305.69(h)(1)(E) with changes to add the word “requirements” which was inadvertently deleted and to add the word “with” preceding the phrase “Chapter 37” to make the rule language grammatically correct. The section is adopted to read as follows “... the permittee certifies that each such unit is in compliance with all applicable 40 CFR Part 265 groundwater monitoring requirements and with Chapter 37 of this title ....”

#### FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of the Texas Government Code, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the Administrative Procedure Act. Although the rules are adopted to protect the environment and reduce risk to human health, this rulemaking is not a major environmental rule because it does not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rules do not adversely affect in a material way the aforementioned aspects of the state because, generally, the changes are made to the financial assurance rules for the purposes of consolidation and organization. In the few instances where a substantive change is adopted, there are no such changes which modify the procedures and criteria used by the commission and the regulated entities in such a manner that the rules, as adopted, are a

“major environmental rule.” The rules, as adopted, provide better-written, better-organized, and easier to use financial assurance rules, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state. The economy, a sector of the economy, productivity, competition, or jobs, are not adversely affected in a material way by the few substantive changes. In fact, the changes should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and by making the rules easier to understand. As the previously existing rules were protective of human health and the environment, this rule adoption does not decrease the protection of the environment or human health. More simply stated, the adoption revises the commission’s rules in a manner which could provide a benefit to the economy while enhancing the protection of the environment and public health and safety.

Furthermore, these rules do not meet any of the four applicability requirements listed in Texas Government Code §2001.0225(a). The rules do not exceed a standard set by federal law because one of the purposes of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in the rules are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because they implement state law provisions to require financial assurance. This adoption does not exceed the requirements of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program because there is no federal financial assurance program. There are, however, federal financial assurance requirements for many of the delegated programs, and these rules are consistent with the corresponding federal financial assurance

requirements. The adoption is not made solely under the general powers of the commission, but is also made under the requirements of specific state law that allows the commission to provide these programs. Finally, these rules are not adopted on an emergency basis to protect the environment or to reduce risks to human health.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of this rulemaking is to delete obsolete language, to make the rules consistent with commission and federal rules, and to implement the commission's guidelines on regulatory reform as well as to provide clarifications to existing rule language. Promulgation and enforcement of the rules does not create a burden on private real property. There are no significant, new requirements being added. In the few instances where substantive changes are being adopted, there are no such changes which modify the financial assurance rules, procedures, or criteria in such a manner that a burden on private real property is modified or created. A landowner's rights in private real property will not be affected by the adoption of these rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the rules are subject to the CMP and must be consistent with applicable CMP goals and policies which are found in 31 TAC §501.12 and §501.14. The CMP goal applicable to the

rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of Coastal Natural Resource Areas (CNRAs). CMP policies applicable to the rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities. In particular, the CMP policy most applicable to these rules is to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

This rulemaking is related to financial assurance, which in turn impacts the issuance of permits, including those permits relating to solid waste facilities. Thus, this rulemaking is subject to the CMP. The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that this rulemaking is consistent with the applicable CMP goals and policies. The commission determined that the rule adoption is consistent with the applicable CMP goals and policies because the modification implemented by these rules is insignificant in relationship to the CMP and has no impact upon CNRAs.

The rulemaking does contain minor, substantive changes. In the few instances where a substantive change is made, it is for the purpose of achieving consistency with state and federal law and to achieve consistency with commission rules. However, the commission has determined that these rules do not have a direct or significant, adverse effect on CNRAs. This adoption does not change the technical permitting requirements of waste facilities nor change the amount of financial assurance that must be

demonstrated. Instead, these financial assurance rules address the means by which demonstrations of financial assurance can be made.

Because this rule adoption does not modify the amount of financial assurance to be demonstrated for permits for owners and operators of hazardous waste storage, processing, or disposal facilities, promulgation and enforcement of these rules has no new effect on the CNRAs. The rules continue having the original effect, which is to require demonstrations of financial assurance in order to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also the rules continue to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Because the rules do not change the amount of financial assurance required by the previously existing rules, the rules are consistent with the applicable CMP goal. CMP policies applicable to the rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities.

Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the adoption does not change the amount of financial assurance required in the previously

existing rules. The rule modifications do not relax the existing requirements, which encourage safe and appropriate storage, management, and treatment of hazardous waste, and thereby the rule modifications result in no substantive effect on the management of coastal areas of the state. In addition, these rules do not violate any applicable provisions of the CMP's stated goals and policies. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that these rules are consistent with CMP goals and policies, and the rules have no new impact upon the coastal area.

#### HEARING AND COMMENTERS

A public hearing was not requested or held concerning these rules. The public comment period closed November 22, 1999 at 5:00 p.m. central standard time. Written comments were not received regarding this chapter. However, comments were received regarding other rule chapters associated with this rulemaking. Those comments as well as the changes that are being made throughout the associated promulgation are described and discussed in the adoption preambles for Chapters 37, 305, 324, and 331 being simultaneously published in this issue of the *Texas Register*.

#### STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this State.

These rules are also adopted under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and

aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection well facilities; HSC, §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to regulate radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste, hazardous waste, and permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides the authority for the commission to require financial assurance from used oil handlers; HSC, §401.108, which provides the authority for the commission to require financial assurance from licensed facilities; and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

**SUBCHAPTER C : APPLICATION FOR PERMIT**

**§305.49, §305.50**

**§305.49. Additional Contents of Application for an Injection Well Permit.**

(a) The following shall be included in an application for an injection well permit:

(1) for Class I wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.121 of this title (relating to Class I Wells);

(2) for Class III wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.122 of this title (relating to Class III wells);

(3) the manner in which compliance with the financial assurance requirements of Chapter 37 of this title (relating to Financial Assurance) will be attained;

(4) the manner in which compliance with the plugging and abandonment requirements of §331.46 of this title (relating to Plugging and Abandonment Standards) will be attained;

(5) the manner in which compliance with the corrective action requirements of §331.44 of this title (relating to Corrective Action Standards) will be attained;

(6) the manner in which compliance with the post-closure requirements of §331.68 of this title (relating to Post-Closure Care) will be attained;

(7) a letter from the Railroad Commission of Texas stating that the drilling of a disposal well and the injection of the waste into the subsurface stratum selected for disposal will not endanger or injure any oil or gas formation;

(8) for Class III wells, a description of all liquid and solid nonradioactive wastes resulting from mining activities;

(9) a complete delineation of any aquifer or portion of an aquifer for which exempt status is sought; and

(10) any other information reasonably required by the executive director to evaluate the proposed injection well or project, including, but not limited to, the information set forth in the Texas Water Code, §27.051(a).

(b) An application for production area authorization shall be submitted with and contain the following for each production area:

(1) mine plan;

- (2) a restoration table;
- (3) a baseline water quality table;
- (4) control parameter upper limits;
- (5) monitor well locations; and
- (6) other information reasonably required by the executive director to evaluate the application.

(c) An application under this section shall comply with the requirements of §305.50(4)(B) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit).

**§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit.**

Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste shall meet the following requirements.

- (1) One original and three copies of the permit application shall be submitted on forms

provided by or approved by the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing or disposal facility. The information provided shall be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health and solid waste statutes. Also to be submitted are listings of sites owned, operated, or controlled by the applicant in the State of Texas. For purposes of this subsection, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included, including, but not limited to, the information set forth in the Texas Solid Waste Disposal Act, §4(e)(13).

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations (CFR) §§270.13-270.26, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §37.131 of this title (relating to Annual Inflation Adjustments to Current Cost Estimates), §37.141 of this title (relating to Increase in Current Cost Estimate), and §335.178 of this title (relating to Cost Estimate for Closure).

(B) An application for a permit to store, process or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including, but not limited to, how an applicant intends to obtain financing for construction of the facility, and to close the facility properly. Financial information submitted to satisfy this subparagraph shall meet the requirements of subparagraphs (C) or (D) of this paragraph.

(C) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of subparagraph (B) of this paragraph, submission of the following information will be an adequate demonstration:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities);

(ii) a certified copy of the resolution; and

(iii) certification by the governing body of passage of the resolution.

(D) For all applicants not meeting the requirements of subparagraph (C) of this paragraph, financial information submitted to satisfy the requirements of subparagraph (B) of this paragraph shall include the applicable items listed under clauses (i) - (vii) of this subparagraph. Financial statements required under clauses (ii) and (iii) of this subparagraph shall be prepared in accordance with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statements, and accountant's opinion letter:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the

financial assurance requirements for closure, post closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title.

(ii) for applicants for which audited financial statements have been prepared the previous two or more years, the following financial statements:

(I) audited financial statements for the previous two years; and

(II) the most current quarterly financial statement prepared according to generally accepted accounting principles.

(iii) for applicants for which audited financial statements have not been prepared the previous two or more years, the following copies of tax returns and financial statements:

(I) copies of tax returns for the previous two years, each certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service";

(II) financial statements for the previous two years; and

(III) additionally, an audited financial statement for the most recent fiscal year;

(iv) for publicly traded companies, copies of Securities and Exchange Commission Form 10-K for the previous two years and the most current Form 10-Q;

(v) for privately-held companies, written disclosure of the information that would normally be found in Securities and Exchange Commission Form 10-K including, but not limited to, the following:

(I) descriptions of the business and its operations;

(II) identification of any affiliated relationships;

(III) credit agreements and terms;

(IV) any legal proceedings involving the applicant;

(V) contingent liabilities; and

(VI) significant accounting policies;

(vi) for applications encompassing facility expansion, capacity expansion, or new construction, estimates of capital costs for expansion and/or construction;

(vii) if an applicant cannot or chooses not to demonstrate sufficient financial resources through submittal of the financial documentation specified in clauses (i)-(v) of this subparagraph and who must or chooses to obtain additional financing through a new stock offering or new debt issuance for facility expansion, capacity expansion, or new construction; and for safe operation, proper closure, and adequate liability coverage, the following information:

(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either finance the facility or place the required financing. The opinion letters must certify that the financial plan is reasonable; certify that financing is obtainable within 180 days of final administrative and judicial disposition of the permit application; and include the time schedule contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing; and

(II) written detail of the annual operating costs of the facility and a projected cash flow statement including the period of construction and first two years of operation. The cash flow statement must demonstrate the financial resources to meet operating costs, debt service, and financial assurance for closure, post-closure care, and liability coverage requirements. A list of the assumptions made to forecast cash flow shall also be provided.

(E) If any of the information required to be disclosed under subparagraph (D) of this paragraph would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

(F) An application for a modification or amendment of a permit which includes a capacity expansion of an existing hazardous waste management facility shall also contain information delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the United States Environmental Protection Agency, that:

(i) the fault has not experienced displacement within Holocene time, or if faults have experienced displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(G) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), the executive director may require the owner or

operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 CFR §§270.14 - 270.26. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5) An application for a new hazardous waste landfill which is filed after January 1, 1986, must include an engineering report which evaluates the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above-grade construction, and the potential adverse effects, if any, which would be associated with the above-grade construction.

(6) An application for a new hazardous waste landfill, land treatment facility, or surface impoundment which is filed after January 1, 1986, which is to be located in the apparent recharge zone of a regional aquifer must include a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

(7) Engineering plans and specifications submitted as part of the permit application shall be prepared and sealed by a registered professional engineer who is currently registered as required by the Texas Engineering Practice Act.

(8) After August 8, 1985, any Part B permit application submitted by an owner or operator

of a facility that stores, processes, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required by this paragraph. At a minimum, such information must address:

(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from documented releases; and

(C) the potential magnitude and nature of the human exposure resulting from such releases.

(9) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, or an application for amendment or modification of a solid waste management facility permit to provide for capacity expansion, the application shall also identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the executive director may require.

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application shall also contain the following:

(A) copies of any relevant land use plans, adopted pursuant to the Texas Local Government Code, Chapter 211 (Vernon's Supplement 1991), which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed;

(B) identification of the names and locations of industrial and other waste-generating facilities within ½ mile of the facility in the case of an application for a permit for a new on-site hazardous waste management facility, and within one mile of the facility in the case of an application for a permit for a new commercial hazardous waste management facility;

(C) the approximate quantity of hazardous waste generated or received annually at those facilities described under subparagraph (B) of this paragraph;

(D) descriptions of the major routes of travel in the vicinity of the facility to be used for the transportation of hazardous waste to and from the facility, together with a map showing the land-use patterns, covering at least a five-mile radius from the boundaries of the facility; and

(E) the information and demonstrations concerning faults described under paragraph (4)(F) of this section.

(11) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain information sufficient to demonstrate to the satisfaction of the commission that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation as a result of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous management facility, the application shall also contain the following:

(A) information sufficient to demonstrate whether a burden will be imposed on public roadways by vehicles traveling to and from the facility, including, at a minimum:

(i) the average gross weight of the various types and sizes of such vehicles to be used for transportation of hazardous waste;

(ii) the average number of such vehicles which would travel the public roadways; and

(iii) identification of the roads to be used by vehicles traveling to and from the facility within a minimum radius of 2 ½ miles from the facility. Such identification must include the major highways nearest the facility, even if they are located outside the 2 ½ mile radius;

(B) in addition to the requirements of subparagraph (A) of this paragraph, an applicant may submit a letter from the relevant agency of the state, county, or municipality which has the authority to regulate and maintain roads which states unequivocally that the roads to and from the facility are adequate for the loads to be placed on them by the proposed facility. Such letter will serve as prima facie evidence that the additional loads placed on the roadways caused by the operation of the facility would not constitute a burden and thus would not require that improvements be made to such roadways. Such letter does not, however, obviate the need to submit the information required under subparagraph (A) of this paragraph;

(C) evidence sufficient to demonstrate that:

(i) emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located, that has the ability to manage a reasonable worst-case emergency condition associated with the operation of the facility; such evidence may include, but is not limited to, the following:

(I) in addition to the contingency plan required under 40 CFR §270.14(b)(7), provisions specifying procedures and timing of practice facility evacuation drills, where

there is a possibility that evacuation of the facility could be necessary;

(II) contracts with any private corporation, municipality, or county to provide emergency response;

(III) weather data which might tend to affect emergency response;

(IV) a definition of worst-case emergencies, e.g., fires, explosions, the Texas Design Hurricane, or the Standard Project Hurricane;

(V) a training program for personnel for response to such emergencies;

(VI) identification of first-responders;

(VII) identification of local or regional emergency medical services and hospitals which have had hazardous materials training;

(VIII) a pre-disaster plan, including drills;

(IX) a mechanism for notifying all applicable government agencies when an incident occurs (i.e., Texas Natural Resource Conservation Commission, Texas Parks and Wildlife, General Land Office, Texas Department of Health, and Texas Railroad Commission);

(X) a showing of coordination with the local emergency planning committee and any local comprehensive emergency management plan; and

(XI) any medical response capability which may be available on the facility property; or

(ii) the applicant has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the executive director to manage a reasonable worst-case emergency condition associated with the facility; such financial assurance may be demonstrated by providing information which may include, but is not limited to, the following:

(I) long-term studies using an environmental model which provide the amount of damages for which the facility is responsible; and

(II) costs involved in supplying any of the information included in or satisfying any of the requirements of clause (i)(I)-(XI) of this subparagraph;

(D) if an applicant does not elect to provide its own facilities or secure bonding to ensure sufficient emergency response capabilities pursuant to §335.183 of this title (relating to Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities), the applicant must provide prior to the time the facility first receives waste:

(i) documentation showing agreements with the county and/or municipality in which the facility is located, or documentation showing agreements with an adjoining county, municipality, mutual aid association, or other appropriate entity such as professional organizations regularly doing business in the area of emergency and/or disaster response; or

(ii) demonstration that a financial assurance mechanism in the form of a negotiable instrument, such as a letter of credit, fully paid in trust fund, or an insurance policy, with the limitation that the funds can only be used for emergency response personnel and equipment and made payable to and for the benefit of the county government and/or municipal government in the county in which the facility is located or proposed to be located; and

(E) a written statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining how the applicant intends to provide emergency response financial assurance to meet the requirements of subparagraphs (C) or (D) of this paragraph; and

(F) a summary of the applicant's experience in hazardous waste management and in particular the hazardous waste management technology proposed for the application location, and, for any applicant without experience in the particular hazardous waste management technology, a conspicuous statement of that lack of experience.

(13) An application for a boiler or industrial furnace burning hazardous waste at a facility

at which the owner or operator uses direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in Title 40 Code of Federal Regulations (CFR) §266.11) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by 40 CFR §266.111 and §335.225 of this title (relating to Additional Standards for Direct Transfer).

(14) The executive director may require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(4)(A) and (1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits).

**SUBCHAPTER D : AMENDMENTS, RENEWALS, TRANSFERS,  
CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS**

**§305.64, §305.69**

**STATUTORY AUTHORITY**

The amendments are adopted under TWC, §5.103, and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state.

These rules are also adopted under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §26.352, which provides the commission with the authority to adopt rules relating to financial assurance for underground storage tanks; TWC, §26.346, which requires the commission to establish rules relating to the registration of underground and aboveground storage tanks; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection well facilities; HSC, §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; Solid Waste Disposal Act in HSC, §361.011, which provides the commission with the authority to manage municipal solid waste; HSC, §361.015 and §361.018, which provide the commission with the authority to manage radioactive waste; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards

of operation for the management of solid waste; HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste, hazardous waste, and permitted facilities; HSC, §361.428, which provides the commission with the authority to regulate compost facilities; Used Oil Collection, Management, and Recycling Act in HSC, §371.024 and §371.028, which require the commission to adopt rules and procedures necessary to implement the used oil recycling program relating to used oil; HSC, §371.026, which provides authority for the commission to require financial assurance from used oil handlers; HSC, §401.108, which provides the authority for the commission to require financial assurance from licensed facilities; and finally, HSC, §401.051 and §401.412, which provide authority for the commission to adopt rules relating to radioactive substances.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

**§305.64. Transfer of Permits.**

(a) A permit is issued in personam and may be transferred only upon approval of the commission. No transfer is required for a corporate name change, as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Except as provided otherwise in subsection (g) of this section, either the transferee or the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

- (1) the name and address of the transferee;
  - (2) date of proposed transfer;
  - (3) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility, including proof of such financial responsibility to become effective when the transfer becomes effective;
  - (4) a fee of \$100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fees);
  - (5) a sworn statement that the application is made with the full knowledge and consent of the permittee if the transferee is filing the application; and
  - (6) any other information the executive director may reasonably require.
- (c) If no agreement regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation

associated therewith is assumed by the transferee, effective on the date of the approved transfer. This section is not intended to relieve a transfer or of any liability.

(d) The executive director must be satisfied that proof of any required financial responsibility is sufficient before transmitting an application for transfer to the commission for further proceedings.

(e) If a person attempting to acquire a permit causes or allows operation of the facility before approval is given, such person shall be considered to be operating without a permit or other authorization.

(f) The commission may refuse to approve a transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been entirely met. The commission shall also consider the prior compliance record of the transferee, if any.

(g) For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 changes in the ownership or operational control of a facility may be made as Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply

with the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), until the new owner or operator has demonstrated compliance with the requirements of Chapter 37, Subchapter P of this title. The new owner or operator must demonstrate compliance with the requirements of Chapter 37, Subchapter P of this title within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the executive director by the new owner or operator of compliance with Chapter 37, Subchapter P of this title, the executive director shall notify the old owner or operator that he no longer needs to comply with Chapter 37, Subchapter P of this title as of the date of demonstration.

(h) The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds one or more of the following:

- (1) the permittee no longer owns the permitted facilities;
- (2) the permittee is about to abandon or cease operation of the facilities;
- (3) the permittee has abandoned or ceased operating the facilities; and
- (4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.

(i) The commission may transfer a permit involuntarily after notice and an opportunity for

hearing, for any of the following reasons:

- (1) the permittee no longer owns or controls the permitted facilities;
- (2) if the facilities have not been built, and the permittee no longer has sufficient property rights in the site of the proposed facilities;
- (3) the permittee has failed or is failing to comply with the terms and conditions of the permit;
- (4) the permitted facilities have been or are about to be abandoned;
- (5) the permittee has violated commission rules or orders;
- (6) the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;
- (7) foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or
- (8) transfer of the permit would maintain the quality of water in the state consistent with

the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state and/or would minimize the damage to the environment; and

(9) the transferee has demonstrated the willingness and ability to comply with the permit and all other applicable requirements.

(j) The commission may initiate proceedings in accordance with the Texas Water Code, Chapter 13, for the appointment of a receiver consistent with this section.

**§305.69. Solid Waste Permit Modification at the Request of the Permittee.**

(a) This section applies only to modifications to industrial and hazardous solid waste permits. Modifications to municipal solid waste permits are covered in §305.70 of this title (relating to Municipal Solid Waste Class I Modifications).

(b) Class I modifications of solid waste permits.

(1) Except as provided in paragraph (2) of this subsection, the permittee may put into effect Class 1 modifications listed in Appendix I of this subchapter under the following conditions:

(A) the permittee must notify the executive director concerning the modification by

certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notification must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notification, the permittee must provide the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41-305.45 and 305.47-305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), and Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(B) the permittee must send notice of the modification request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice). This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior executive director approval, the notification must be made within 90 calendar days after the executive director approves the request; and

(C) any person may request the executive director to review, and the executive director may for cause reject, any Class 1 modification. The executive director must inform the permittee by

certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I by a superscript 1 may be made only with the prior written approval of the executive director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in subsection (c) of this section for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the executive director of this decision in the notification required in subsection (c)(1) of this section.

(c) Class 2 modifications of solid waste permits.

(1) For Class 2 modifications, which are listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies the modification as a Class 2 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41-305.45 and 305.47-305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), and Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the executive director evidence of the mailing and publication. The notice must include:

(A) announcement of a 60-day comment period, in accordance with paragraph (5) of this subsection, and the name and address of an agency contact to whom comments must be sent;

(B) announcement of the date, time, and place for a public meeting to be held in

accordance with paragraph (4) of this subsection;

(C) name and telephone number of the permittee's contact person;

(D) name and telephone number of an agency contact person;

(E) location where copies of the modification request and any supporting documents can be viewed and copied;

(F) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper.

Comments should be submitted to the agency contact identified in the public notice.

(6) No later than 90 days after receipt of the modification request, subparagraphs (A), (B), (C), (D), or (E) of this paragraph must be met, subject to §50.33 of this title (relating to Executive Director Action on Application), as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public

notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization; or

(E) the executive director must notify the permittee that the executive director or the commission will decide on the request within the next 30 days.

(7) If the executive director notifies the permittee of a 30-day extension for a decision, then no later than 120 days after receipt of the modification request, subparagraphs (A), (B), (C), or (D) of this paragraph must be met, subject to §50.33 of this title (relating to Executive Director Action on Application), as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification

request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification;

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(8) If the executive director or the commission fails to make one of the decisions specified in paragraph (7) of this subsection by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal agency action. The authorized activities must be conducted as described

in the permit modification request and must be in compliance with all appropriate standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities). If the commission approves, with or without changes, or denies any modification request during the term of the temporary authorization issued pursuant to paragraph (6) or (7) of this subsection, such action cancels the temporary authorization. The commission is the sole authority for approving or denying the modification request during the term of the temporary authorization. If the executive director or the commission approves, with or without changes, or if the commission denies the modification request during the term of the automatic authorization provided for in this paragraph, such action cancels the automatic authorization.

(9) In the case of an automatic authorization under paragraph (8) of this subsection, or a temporary authorization under paragraph (6)(D) or (7)(D) of this subsection, if the executive director or the commission has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to all persons listed in §39.13 of this title (relating to Mailed Notice), and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(A) the permittee has been authorized temporarily to conduct the activities described in the permit modification request; and

(B) unless the executive director or the commission acts to give final approval or denial

of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(10) If the owner/operator fails to notify the public by the date specified in paragraph (9) of this subsection, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(11) Except as provided in paragraph (13) of this subsection, if the executive director or the commission does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as Class 3 modification, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless amended or modified later under §305.62 of this title (relating to Amendment) or this section. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities).

(12) In the processing of each Class 2 modification request which is subsequently approved or denied by the executive director or the commission in accordance with paragraph (6) or (7) of this subsection, or each Class 2 modification request for which a temporary authorization is issued in accordance with subsection (f) of this section or a reclassification to a Class 3 modification is made in accordance with paragraph (6)(C) or (7)(C) of this subsection, the executive director must consider all

written comments submitted to the agency during the public comment period and must respond in writing to all significant comments.

(13) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods for final approval or denial of a Class 2 modification request or for reclassifying a modification as Class 3.

(14) The commission or the executive director may change the terms of, and the commission may deny a Class 2 permit modification request under paragraphs (6)-(8) of this subsection for any of the following reasons:

(A) the modification request is incomplete;

(B) the requested modification does not comply with the appropriate requirements of Subchapter F, Chapter 335 of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) or other applicable requirements; or

(C) the conditions of the modification fail to protect human health and the environment.

(15) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the executive director

establishes a later date for commencing construction and informs the permittee in writing before the 60th day.

(d) Class 3 modifications of solid waste permits.

(1) For Class 3 modifications listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies that the modification is a Class 3 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41-305.45 and 305.47-305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application

Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses); and Subchapter Q of this chapter (relating to Permits for Boilers and Industrial Furnaces Burning Hazardous Waste).

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice) and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request and evidence of the mailing and publication of the notice shall be provided to the executive director. The notice shall include the following:

(A) all information required by §39.11 of this title (relating to Text of Mailed Notice);

(B) announcement of a 60-day comment period, and the name and address of an agency contact person to whom comments must be sent;

(C) announcement of the date, time, and place for a public meeting on the modification request, to be held in accordance with paragraph (4) of this subsection;

(D) name and telephone number of the permittee's contact person;

(E) name and telephone number of an agency contact person;

(F) identification of the location where copies of the modification request and any supporting documents can be viewed and copied; and

(G) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact person identified in the public notice.

(6) After the conclusion of the 60-day comment period, the permit modification request shall be granted or denied in accordance with the applicable requirements of Chapter 39 of this title

(relating to Public Notice), Chapter 50 of this title (relating to Action on Applications), and Chapter 55 of this title (relating to Request for Contested Case Hearing; Public Comment). When a permit is modified, only the conditions subject to modification are reopened.

(e) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of this subchapter, the permittee may submit a Class 3 modification request to the agency, or the permittee may request a determination by the executive director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or Class 2 modification, the permittee must provide the agency with the necessary information to support the requested classification.

(2) The executive director shall make the determination described in paragraph (1) of this subsection as promptly as practicable. In determining the appropriate class for a specific modification, the executive director shall consider the similarity of the modification to other modifications codified in Appendix I and the following criteria.

(A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the executive director may require prior approval;

(B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(i) common variations in the types and quantities of the wastes managed under the facility permit;

(ii) technological advancements; and

(iii) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit; and

(C) Class 3 modifications reflect a substantial alteration of the facility or its operations.

(f) Temporary authorizations.

(1) Upon request of the permittee, the commission may grant the permittee a temporary authorization having a term of up to 180 days, in accordance with this subsection, and in accordance with the following public notice requirements:

(A) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(B) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(2) The permittee may request a temporary authorization for:

(A) any Class 2 modification meeting the criteria in paragraph (5)(B) of this subsection; and

(B) any Class 3 modification that meets the criteria in paragraph (5)(B)(i) or (ii) of this subsection, or that meets any of the criteria in paragraph (5)(B)(iii)-(v) of this subsection and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(3) The temporary authorization request must include:

(A) a specific description of the activities to be conducted under the temporary authorization;

(B) an explanation of why the temporary authorization is necessary and reasonably unavoidable; and

(C) sufficient information to ensure compliance with the applicable standards of Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of

Hazardous Waste Storage, Processing or Disposal Facilities) and 40 Code of Federal Regulations (CFR) Part 264.

(4) The permittee must send a notice about the temporary authorization request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice). This notification must be made within seven days of submission of the authorization request.

(5) The commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find:

(A) the authorized activities are in compliance with the applicable standards of Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) and 40 CFR Part 264; and

(B) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(i) to facilitate timely implementation of closure or corrective action activities;

(ii) to allow treatment or storage in tanks, containers, or containment buildings, of restricted wastes in accordance with Chapter 335, Subchapter O of this title (relating to Land Disposal Restrictions), 40 CFR Part 268, or RCRA §3004;

(iii) to prevent disruption of ongoing waste management activities;

(iv) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(v) to facilitate other changes to protect human health and the environment.

(6) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(A) the reissued temporary authorization constitutes the commission's decision on a Class 2 permit modification in accordance with subsection (c)(6)(D) or (7)(D) of this section; or

(B) the commission determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection (d) of this section are conducted.

(g) Public notice and appeals of permit modification decisions.

(1) The commission shall notify all persons listed in §39.13 of this title (relating to Mailed Notice) within ten working days of any decision under this section to grant or deny a Class 2 or 3

permit modification request. The commission shall also notify such persons within ten working days after an automatic authorization for a Class 2 modification goes into effect under subsection (c)(8) or (11) of this section.

(2) The executive director's or the commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the commission's rules and in the Administrative Procedure Act, the Government Code, Chapter 2002.

(h) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR, Part 261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

(A) the unit was in existence as a hazardous waste facility unit with respect to the newly listed or characteristic waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste or regulating the unit;

(B) the permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(C) the permittee is in substantial compliance with the applicable standards of Chapter

335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 335, Subchapter H, Divisions 1 through 4 (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and 40 CFR Part 265 and Part 266;

(D) the permittee also submits a complete Class 2 or 3 modification request within 180 days after the effective date of the final rule listing or identifying the waste or subjecting the unit to RCRA Subtitle C management standards; and

(E) in the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable 40 CFR, Part 265 groundwater monitoring requirements and with Chapter 37 of this title (relating to Financial Assurance) on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with these requirements, the owner or operator shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25% capacity expansion limit for Class 2 modifications.

(i) Combustion facility changes to meet Title 40 Code of Federal Regulations (CFR) Part 63 Maximum Achievable Control Technology (MACT) standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under L.9. of Appendix I of this

subchapter:

(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR §63.1211, as amended through June 19, 1998, at 63 FedReg 33782, before a permit modification can be requested under this section; and

(2) If the executive director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The executive director may, at his or her discretion, extend this 90-day deadline one time for up to 30 days by notifying the facility owner or operator.

(j) Appendix I. The following appendix will be used for the purposes of Subchapter D which relates to industrial and hazardous solid waste permit modification at the request of the permittee.

Figure: 30 TAC §305.69(j) (No change.)

## **SUBCHAPTER H : ADDITIONAL CONDITIONS FOR INJECTION WELL PERMITS**

### **§305.154**

#### **STATUTORY AUTHORITY**

The amendment is adopted under TWC, §5.103, and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state.

These rules are also adopted under TWC, §26.011, which provides the commission with the authority to adopt rules to regulate water quality; TWC, §27.019, which provides the commission with the authority to adopt rules and procedures necessary for the management of underground injection well facilities; TWC, §27.073, which provides the commission with the authority to require financial assurance for underground injection well facilities; HSC, §341.031, which provides authority for the commission to adopt rules to implement the federal Safe Drinking Water Act; HSC, §341.035 and §341.0355, which provide the commission with the authority to require financial assurance for public drinking water systems; HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; and finally, HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste, hazardous waste, and permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

**§305.154. Standards.**

(a) In addition to other standard permit conditions listed elsewhere in this chapter, the following conditions and other applicable standards listed in Chapter 331 of this title (relating to Underground Injection Control) shall be incorporated into each permit expressly or by reference to this chapter. The commission may impose stricter standards where appropriate.

(1) Construction requirements. Section 331.62 and §331.82 of this title (relating to Construction Standards; Construction Requirements).

(2) Compliance schedule. See §305.127(3)(E) of this title (relating to Schedule of Compliance).

(3) Construction plans. Changes in construction plans shall be approved under §331.45 of this title (relating to Executive Director Approval of Construction and Completion), or, by minor modification according to §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee).

(4) Commencing operations. Commencement of injection operations before approval by the executive director of construction and completion is a violation of the permit and may be considered grounds for revocation or suspension of the permit, and for enforcement action. Except for new wells authorized by an area permit under subsection (b) of this section (relating to Standards), a new injection

well may not commence injection until construction is complete, and:

(A) the permittee has submitted notice of completion of construction to the Director;

and

(B) the executive director has inspected or otherwise reviewed the new injection well and finds it complies with the conditions of the permit; or

(C) the permittee has not received notice from the executive director of intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in subparagraph (A) of this paragraph, in which case prior inspection or review is waived and the permittee may commence injection. The executive director shall include in the notice a reasonable time period in which he shall inspect the well.

(D) for Class I wells, submission of the completion report required by §331.65(a)(1) of this title (relating to Monitoring Requirements) shall constitute the notice required in subparagraph (A) of this paragraph.

(5) Operating requirements. Section 331.63 of this title (relating to Operating Requirements) and §331.83 of this title (relating to Operating Requirements).

(6) Monitoring and reporting. All permits shall specify requirements concerning the

proper use, maintenance and installation, when appropriate, of monitoring equipment or methods including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring. Reporting shall be no less frequent than specified in the appropriate sections of Chapter 331 of this title (relating to Underground Injection Control). Section 331.64 and §331.65 of this title (relating to Monitoring Requirements; Reporting Requirements); §331.84 and §331.85 of this title (relating to Monitoring Requirements; Reporting Requirements); or Chapter 331, Subchapter F of this title (relating to Standards for Class III Well Production Area Development).

(7) Closure. The permittee shall notify the executive director and obtain approval before plugging an injection well. After failing to operate for a period of two years, the owner or operator shall close the well in accordance with an approved plan unless:

(A) notice is provided to the executive director; and

(B) actions and procedures are described, satisfactory to the executive director, that the owner or operator will take to ensure that the well will not endanger underground sources of drinking water (USDWs) during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable, unless waived by the executive director.

(8) Corrective action requirements. Section 331.44 of this title (relating to Corrective Action Standards) and §305.152 of this title (relating to Corrective Action).

(9) Financial assurance requirements. The permittee is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon in accordance with Chapter 37, Subchapter Q of this title (relating to Financial Assurance for Underground Injection Control Wells). The permittee shall show evidence of such financial responsibility to the executive director.

(10) Post-closure requirements. Section 331.68 of this title (relating to Post-Closure Standards).

(11) Liability coverage requirements. The permittee of hazardous waste injection wells shall maintain sufficient liability coverage for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents in accordance with Chapter 37, Subchapter Q of this title.

(b) Area permits shall specify:

- (1) The area within which underground injections are authorized, and
- (2) The requirements for construction, monitoring, reporting, operation, and abandonment for all wells authorized by the permit.
- (3) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:

(A) The permittee notifies the executive director at such time as the permit requires;

(B) The additional well satisfies the criteria in §331.7(b) of this title (relating to Permit Required) and meets the requirements specified in the permit under paragraphs (1) and (2) of this subsection; and

(C) The cumulative effects of drilling and operation of additional injection wells are considered by the executive director during evaluation of the area permit application and are acceptable to the executive director.

(4) If the executive director determines that any well constructed pursuant to paragraph (3) of this subsection does not satisfy any of the requirements of this subsection, the executive director may amend, terminate, or take enforcement action. If the executive director determines that cumulative effects are unacceptable, the permit may be amended under §305.62 of this title (relating to Amendment).